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No. 92-421

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1992

RICHMOND MEMORIAL HOSPITAL,

Petitioner,

v.

TAJA SMITH, an infant who sues by and through her next friend and mother, Connie Elizabeth Smith, and CONNIE ELIZABETH SMITH, individually,

Respondents.

On Petition For a Writ Of Certiorari To The Supreme Court Of Virginia

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SUPPLEMENTAL BRIEF

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Richmond Memorial Hospital ("the Hospital"),* by counsel, submits this supplemental brief in order to apprise the Court of authority decided since the filing of the Hospital's petition for a writ of certiorari which might well affect the Court's ruling on the petition.

ARGUMENT

On October 7, 1992, the United States Court of Appeals for the Fourth Circuit handed down a decision in Baber v. Hospital Corporation of America, ___ F.2d ___, 1992 WL 259249 (4th Cir. Oct. 7, 1992), interpreting the requirements of the Emergency Medical Treatment and Active Labor Act ("EMTALA" or "the Act"), 42 U.S.C. § 1395dd (also known as the patient-dumping

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* The list of the Hospital's parent and subsidiary companies required by Rule 29.1 is contained in the Petition for Certiorari, at ii.

statute), as they relate to hospitals sued for damages under the Act. In contrast to the Supreme Court of Virginia's decision in the instant case, Smith v. Richmond Memorial Hospital, 243 Va. 445, 416 S.E.2d 689 (1992), reproduced in Appendix A to the petition for certiorari, which merely paid lip-service to application of the plain meaning rule of statutory interpretation (A-17 through 18, 25), the Fourth Circuit in Baber applied the plain meaning rule and refused to extend the requirements of EMTALA to hospital situations not addressed by the statute. 1992 WL 259249, * 11. As a result of the Baber decision, whether hospitals in Virginia face liability for damages under EMTALA in a treatment setting outside the emergency department may depend upon whether the

suit alleging violation of the Act is filed in state or federal court.

In Baber, a patient with a history of recurring psychiatric problems presented to the emergency room of Raleigh General Hospital ("RGH") with various complaints. The emergency room doctor examined her, ordered certain laboratory tests and administered medication in an attempt to calm her down. The patient, who was very agitated during her stay in the emergency room, experienced a seizure and fell and struck her head. The emergency room doctor again examined the patient, sutured a small laceration on her head, performed a blood gas study and watched her for focal neurological signs over a period of one hour. Believing that her seizure was related to her recurring psychiatric problems

and that she had not suffered a serious head injury as a result of the fall, and after discussing the situation with her attending physician, the emergency room doctor at RGH had the patient transferred to the psychiatric ward at Beckley Appalachian Regional Hospital ("BARH") where she had previously been treated. RGH did not have a psychiatric ward. 1992 WL 259249, at *2 - *3.

The patient was admitted directly to the psychiatric ward at BARH and was not processed through its emergency room. While the patient was checked every fifteen minutes by the nurses at BARH, she did not receive an initial screening examination. A few hours later she experienced another seizure and a CAT scan revealed a fractured skull and a subdural hematoma. She was transported back to RGH because that facility had a

neurosurgeon on staff and BARH did not have the facility or staff to treat serious neurological problems. Later that day she died as a result of a cerebral hemorrhage. Id. at *3.

A suit was filed, claiming inter alia that RGH had violated EMTALA by failing to provide an appropriate medical screening to discover that the patient had an emergency medical condition as required by § 1395dd (a) and by transferring her before her emergency medical condition had been stabilized and without completing the proper paperwork as required by §§ 1395dd (b) and (c). Id. at *5. It was also claimed that BARH violated EMTALA by failing to perform an appropriate medical screening upon the patient's admittance to its psychiatric unit. Id. at *11.

The Fourth Circuit held that RGH had satisfied the appropriate medical screening requirement of § 1395dd (a) by providing the patient with a screening examination which conformed with that which it would have performed on any patient in a similar condition. Id. at *6. The court further held that RGH had not violated EMTALA's transfer requirements, because these requirements attach only when the hospital has actual knowledge that the patient has an emergency medical condition and RGH had no such knowledge. Id. at *10 - *11. Finally, the court held that BARH had not violated EMTALA because a hospital's duty to provide an appropriate medical screening rises only where the patient seeks treatment from the hospital's emergency department. Id. at *11.

Unlike the Supreme Court of Virginia's holding in the instant case, the Fourth Circuit in Baber held that contact with the hospital's emergency room is necessary in order to invoke the requirements of EMTALA and that the duties created by EMTALA do not apply to all treatment settings within a hospital. Id. at *11. The Fourth Circuit declined the plaintiff's invitation to change the plain meaning of the statute "to require that hospitals provide an appropriate medical screening to all patients seeking treatment from any section or department of a hospital." Id. at *12. In contrast, the Supreme Court of Virginia in Smith v. Richmond Memorial Hospital accepted the plaintiff's invitation to change the plain meaning of the statute to apply EMTALA's transfer requirements to all patients receiving treatment from any

section or department of a hospital, by reading subsections (b) and (c) of § 1395dd out of context and wholly without reference to subsection (a).

As the Fourth Circuit stated, "EMTALA is designed to require hospitals to treat patients with emergency medical conditions by requiring hospitals to provide all patients with a basic evaluation to determine whether the patient has a serious or life threatening condition." Id. at *12. The court held, however, that this requirement of a basic evaluation applies only in the emergency room, not the inpatient setting. Id. at *11. Richmond Memorial's holding with respect to the applicability of EMTALA's transfer requirements to the inpatient setting appears to conflict, at least in principle, with the view of EMTALA articulated by the Fourth

Circuit in Baber. Consequently, hospitals in Virginia may be faced with the incongruous result that they are subject to liability for alleged violations of EMTALA in the inpatient setting when sued in state court, but are not subject to such liability if sued in federal court.

In addition, on October 7, 1992, the United States Court of Appeals for the Seventh Circuit reversed the holding in Johnson v. University of Chicago Hospitals, 774 F. Supp. 510 N.D. Ill. 1991), rev'd, ___ F.2d ___, 1992 WL 259404 (7th Cir. Oct. 7, 1992), a case cited by the Hospital in its petition at 24 and by the American Hospital Association in its amicus brief in support of the petition at 6, in which the district court had dismissed EMTALA claims against the defendant hospital ("UCH") on the ground that the plaintiff had not met the Act's

threshold requirement of alleging presentment to the hospital's emergency department. The Seventh Circuit held that EMTALA applies where paramedics responding to an emergency call at the infant patient's home communicated by telemetry with a nurse at UCH, which served as the resource facility for the South Chicago Mobile Intensive Care System, and were advised to transport the patient to another hospital because UCH had declared a partial bypass due to the lack of pediatric intensive care beds outside of its emergency room. 1992 WL 259404, *1, *4.

There remains a conflict among the courts whether presentment to a hospital's emergency room is a requirement for triggering the duties and liabilities prescribed by EMTALA. See, e.g., Daniels v. Wills Eye

Hosp., No. Civ. A. 91-2309, 1992 WL 103009 (E.D. Pa. May 7, 1992); but see, e.g., Helton v. Phelps County Regional Medical Center, 794 F. Supp. 332, 333 (E.D. Mo. 1992) (citing approvingly Smith v. Richmond Memorial Hospital, 243 Va. 445, 416 S.E.2d 689 (1992)). In Richmond Memorial Hospital, the Supreme Court of Virginia distinguished the district court's holding in University of Chicago Hospitals on the ground that the patient was not taken to the emergency room of UCH, "nor was she ever even present in the hospital." Petition for Certiorari, A-22 through A-23. The Seventh Circuit's reversal in University of Chicago Hospitals, allowing an EMTALA action to proceed against a hospital where the patient never came to the hospital at all, let alone to its emergency room as required by the Act, serves to further

point out the confusion which exists among the courts regarding the proper interpretation of the Act, the disparate impact on hospitals throughout the country and the need for this Court to grant the Hospital's petition for certiorari in order to establish for all courts, state and federal, that the threshold requirement for an EMTALA claim is presentment to the emergency department of a Medicare participating hospital and that subsections (b) and (c) of the Act are not to be read out of context to create liability in an inpatient treatment setting or after initial stabilization when no such liability was created by Congress.

CONCLUSION

For the reasons stated above and in the Hospital's petition for certiorari, the petition should be granted.

Respectfully submitted,

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